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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,196	10/30/2003	Michael Harville	200313240-1	3553
22879 7590 02/03/2011 HEWLETT-PACKARD COMPANY Intellectual Property Administration 3404 E. Harmony Road Mail Stop 35 FORT COLLINS, CO 80528				
EXAMINER BURGESS, BARBARA N				
ART UNIT 2457		PAPER NUMBER		
NOTIFICATION DATE 02/03/2011		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/698,196

Applicant(s)

HARVILLE ET AL.

Examiner

BARBARA N. BURGESS

Art Unit

2457

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 November 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 38-76 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 38-76 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsman's Patent Drawing Review (PTO-940)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This Office action is in response to amendment filed November 19, 2010. Claims 1, 38-76 are presented for further examination.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 38-76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lumelsky et al. (hereinafter "Lume", US Patent 6,529,950) in view of Pitkin et al. (hereinafter "Pitkin", US Patent 5,341,477).

As per claim 1, Lume discloses a method for managing a streaming media service, said method comprising:

- receiving a request for a service from a client, said service comprising a service component (col. 5, lines 61-67);
- selecting a service location manager (negotiator) to which to provide said request from a plurality of service location managers (col. 6, lines 3-18); and
- selecting a service provider to which to assign said service component from a plurality of service providers of a network, wherein said selecting said service

provider is performed by said service location manager (col. 6, lines 25-33, 50-59);

- informing said service provider of said assignment to perform said media service component, causing said service provider to prepare to perform said streaming media service on streaming media (col. 3, lines 60-67, col. 8, lines 26-30).

Lume does not explicitly disclose:

- providing said client information for locating and contacting said service provider to receive said streaming media from said service provider without utilizing said service location manager.

However, in an analogous art, Pitkin teaches a broker (service location manager) receiving client requests for services and suggesting/selecting servers to implement the requested service. Servers are stored and shown to the user as entries in a preview window. The client accesses the service through the entries presented. If the first server entry fails, the client attempts to use the second server entry without having to reconnect to the broker (column 10, lines 53-67).

Therefore, one of ordinary skill in the art at the time the invention was made would have found it obvious to implement or incorporate Pitkin's providing client information for locating and contacting a service provider without utilizing a service location manager in Lume's method decreasing client connection time.

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As per claim 38, Lume discloses wherein said selecting said service location manager comprises:

- maintaining a record comprising identifying information of a service location manager among said plurality of service location managers (col. 8, lines 22-30);
and
- selecting said service location manager according to said record (col. 6, lines 60-66).

As per claim 39, Lume discloses wherein said selecting said service location manager comprises:

- maintaining a record comprising a prioritized list of at least one service location manager among said plurality of service location managers (col. 8, lines 20-30);
and
- selecting said service location manager according to the order of priority of said list of said record (col. 8, lines 57-67).

As per claim 40, Lume discloses wherein said selecting said service location manager comprises:

- maintaining a record comprising identifying information for a set of service location managers among said plurality of service location managers (col. 8, lines 22-33) and

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- selecting said service location manager randomly from said record (col. 8, lines 57-67).

As per claim **41**, Lume discloses wherein said selecting said service location manager comprises:

- maintaining a record comprising identifying information for a set of service location managers among said plurality of service location managers (col. 9, lines 57-67); and
- selecting said service location manager in a round robin manner from said record (col. 8, lines 57-67).

As per claim **42**, Lume discloses:

- wherein said selecting said service location manager comprises a comparison of processing loads of at least two service location managers among said plurality of service location managers (col. 3, lines 51-61).

As per claim **43**, Lume discloses:

- wherein said selecting said service location manager comprises a comparison of available resources of a first set of service providers supervised by said service location manager and available resources of a second set of service providers supervised by a second service location manager (col. 4, lines 61-67, col. 4, lines 1-8).

As per claim **44**, Lume discloses:

- wherein said selecting said service location manager is based on an estimate of a network communication condition between two entities connected by the network (col. 6, lines 62-67 and col. 4, lines 1-17).

As per claim **45**, Lume discloses:

- wherein said estimate of said network communication condition is associated with said client (col. 6, lines 1-10 and col. 4, lines 50-67).

As per claim **46**, Lume discloses:

- wherein said estimate of said network communication condition is associated with a content source of said streaming media (column 6, lines 25-34).

As per claim **47**, Lume discloses wherein said selecting said service location manager is based on one of the group consisting of:

- pending service application request queue length of a service location manager, expected latency of a service location manager for assigning said service request, and available network communication bandwidth of a service location manager (col. 8, lines 25-34).

As per claim **48**, Lume discloses:

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- notifying a second service location manager among said plurality of service location managers of the assignment of said service provider to perform said media service component (col. 5, lines 35-60).

As per claim **49**, Lume discloses:

- notifying a second service location manager among said plurality of service location managers of the completion of performance of said media service component (col. 6, lines 45-60).

As per claim **50**, Lume discloses:

- a second service location manager assuming the role of said service location manager if said service location manager is determined to be non-responsive (col. 6, lines 53-67).

As per claim **51**, Lume further discloses:

- maintaining a record comprising identifying information of a set of service location managers among said plurality of service location managers, each service location manager of said set of service location managers supervising said service provider (col. 6, lines 50-67 and col. 8, lines 3-17).
- notifying said set of service location managers according to said record of said assignment of said service provider to perform said media service component (col. 8, lines 33-40).

As per claim **52**, Lume discloses:

- wherein said maintaining and said notifying is performed by said service provider or said service location manager (col. 6, lines 50-67).

As per claim **53**, Lume further discloses:

- maintaining a record comprising identifying information of a set of service location managers among said plurality of service location managers, each service location manager of said set of service location managers supervising said service provider (col. 8, lines 44-57).
- notifying said set of service location managers according to said record of the completion of performance of said media service component by said service provider (col. 8, lines 55-67).

As per claim **54**, Lume discloses:

- wherein said maintaining and said notifying is performed by said service provider or said service location manager (col. 3, lines 11-17).

As per claim **55**, Lume discloses:

- wherein said service provider is supervised by more than one service location manager among said plurality of service location managers (col. 6, lines 57-67).

As per claim 56, Lume discloses a system for providing streaming content to a client device, said system comprising:

- a plurality of service location managers (col. 6, lines 3-18);
- a plurality of service providers (col. 6, lines 25-35),
- each service provider capable of performing a service on an item of streaming input content to produce said streaming content (col. 6, lines 50-59); and
- a portal providing a first point of contact for said client device, said portal for receiving from said client device a request for performance of said service on an item of streaming input content, said portal for selecting a service location manager to which to provide said request from said plurality of service location managers, said service location manager for receiving said request from said portal and for selecting a service provider from said plurality of service providers and informing said service provider of said assignment to perform said service on said streaming input content to produce said streaming content ((col. 4, lines 65-67, col. 5, lines 15-27, 58-67, col. 6, lines 1-2, 25-59, col. 8, lines 25-35, col. 10, lines 45-50).

Lume does not explicitly disclose:

- for providing said service provider with information to transfer communication from said portal to said service provider for providing said streaming content to said client from said service provider

However, in an analogous art, Pitkin teaches a broker (service location manager) receiving client requests for services and suggesting/selecting servers to implement the

requested service. Servers are stored and shown to the user as entries in a preview window. The client accesses the service through the entries presented. If the first server entry fails, the client attempts to use the second server entry without having to reconnect to the broker (column 10, lines 53-67).

Therefore, one of ordinary skill in the art at the time the invention was made would have found it obvious to implement or incorporate Pitkin's providing client information for locating and contacting a service provider without utilizing a service location manager in Lume's method decreasing client connection time.

As per claim 57, Lume discloses:

- wherein said portal maintains a record comprising a prioritized listing of at least one service location manager among said plurality of service location managers and selects said service location manager in order of priority according to said prioritized listing (col. 6, lines 25-40).

As per claim 58, Lume discloses:

- wherein said portal maintains a record comprising identifying information of a set of service location managers among said plurality of service location managers and selects said service location manager in a round robin manner from said record (col. 6, lines 20-35).

As per claim 59, Lume discloses:

- wherein said portal selects said service location manager by comparing processing loads of at least two service location managers among said plurality of service location managers (col. 3, lines 51-67).

As per claim **60**, Lume discloses:

- wherein said portal selects said service location manager by comparing available resources of a first set of service providers supervised by said service location manager and available resources of a second set of service providers supervised by a second service location manager (col. 4, lines 61-67 and col. 5, lines 1-8).

As per claim **61**, Lume discloses:

- wherein said portal selects said service location manager based on an estimate of a network communication condition between two entities connected by the network (col. 8, lines 50-67).

As per claim **62**, Lume discloses:

- wherein said service location manager notifies a second service location manager among said plurality of service location managers of said assignment of said service provider to perform said service (col. 9, lines 22-40).

As per claim **63**, Lume discloses:

- wherein said portal determines if said service location manager of said plurality of service location managers is non-responsive (col. 9 , lines 53-67).

As per claim **64**, Lume discloses:

- wherein said portal activates a second service location manager of said plurality of service location managers to assume the role of said service location manager, provided said portal determines said service location manager to be non-responsive (col. 6 , lines 53-67).

As per claim **65**, Lume discloses:

- wherein said service provider is supervised by more than one service location manager of said plurality of service location managers (col. 5, lines 65-67 and col. 6, lines 1-8).

As per claim **66**, Lume discloses:

- wherein said service provider maintains a record comprising identifying information of service location managers that supervise it (col. 6, lines 50-67).

As per claim **67**, Lume discloses:

- wherein said service provider notifies said service location managers that supervise it of said assignment to perform said service (col. 8, lines 1-20).

As per claim **68**, Lume discloses:

- wherein said service provider notifies said service location managers that supervise it of completion of performance of said service by said service provider (col. 6, lines 22-35).

As per claim **69**, Lume discloses:

- wherein said service location manager maintains a record comprising identifying information of a second service location manager that also supervises said service provider (col. 5, lines 47-58 and col. 6, lines 3-17).

As per claim **70**, Lume discloses:

- wherein said service location manager notifies said second service location manager of said assignment of said service provider to perform said service (col. 8, lines 45-57).

As per claim **71**, Lume discloses:

- wherein said service location manager notifies said second service location manager of completion of performance of said service by said service provider (col. 8, lines 50-67).

As per claim **72**, Lume discloses:

- wherein said service provider is supervised by a first service location manager, and said first service location manager transfers supervision of said service provider to a second service location manager (col. 6, lines 40-58).

As per claim **73**, Lume discloses:

- wherein said transfer is based on a computational load of said first service location manager (col. 3, lines 51-61).

As per claim **74**, Lume discloses:

- wherein said transfer is based on availability of resources of a service provider supervised by said second service location manager (col. 5, lines 40-58 and col. 6, lines 3-17).

As per claim **75**, Lume discloses:

- wherein said service provider is selected to be supervised by said service location manager based on a network communication condition between said service location manager and said service provider (col. 3, lines 62-67 and col. 4, lines 1-17).

As per claim **76**, Lume discloses:

- wherein said plurality of service location managers comprises a master service location manager that monitors the status of other service location managers of

said plurality of service location managers (col. 3, lines 62-67 and col. 5, lines 1-17.

Response to Arguments

3. Applicant's arguments filed have been fully considered but they are not persuasive.

The Office notes the following argument(s):

- (a) Instant office action fails to explain the differences between Lumelsky, Pitkin, and Applicants' claimed features.
- (b) Office action fails to explain why these differences would have been obvious to one of ordinary skill in the art.
- (c) Lumelsky teaches away from "providing said client...information for locating and contacting said service provider to receive said streaming media from said service provider without utilizing said service location manager".
- (d) There is no motivation to combine Lumelsky and Pitkin.
- (e) Pitkin teaches away from "informing...said service provider of said assignment to perform said media service component" and "causing said service provider to prepare to perform said streaming media service on streaming media".

In response to:

- (a) The office action clearly shows the limitations of the claim that is taught by Lumelsky and what is not taught. The action also states the limitation taught by Pitkin.

(b), (d) In response to applicant's argument that there is no teaching, suggestion, or motivation to combine the references, the examiner recognizes that obviousness may be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988), *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992), and *KSR International Co. v. Teleflex, Inc.*, 550 U.S. 398, 82 USPQ2d 1385 (2007).

In this case, one of ordinary skill in the art at the time the invention was made would have found it obvious to implement or incorporate Pitkin's providing client information for locating and contacting a service provider without utilizing a service location manager in Lume's method decreasing client connection time.

(c) Lumelsky is not cited for teaching this feature. See the rejection of claims 1 and 56. Pitkin is cited for teaching this feature.

In response to applicant's argument that Lumelsky teaches away, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992).

(e) Pitkin is not cited for teaching this feature. See the rejection of claims 1 and 56. Lumelsky is cited for teaching this feature.

In response to applicant's argument that Pitkin teaches away, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992).

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BARBARA N. BURGESS whose telephone number is (571)272-3996. The examiner can normally be reached on M-F (8:00am-4:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571) 272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Barbara N Burgess/
Examiner, Art Unit 2457

January 30, 2011

/Barbara N Burgess/
Primary Examiner, Art Unit 2457

Barbara N Burgess
Primary Examiner
Art Unit 2457